

### **REMARKS / ARGUMENTS**

In response to the Office Action mailed February 20, 2007, the Examiner's claim rejections have been considered. Applicant respectfully traverses all rejections regarding all pending claims and earnestly solicits allowance of these claims.

#### **1. Claim Rejection – 35 U.S.C. § 102**

The Examiner has rejected claims 21-24, 28-29, 41-44, and 46-47 under 35 U.S.C. § 102(b) as being anticipated by VanNatter.

Independent claim 21 includes the following features:

each pet toy secondary member further having an interface surface that corresponds to the main member interface surfaces

wherein the interface surfaces of the main member and the interface surfaces of the secondary members are . . . non-destructively detachable by a house pet using its mouth and paws to create a detached toy state, and repeatably reattachable by a human to recreate an attached toy state after being detached by a house pet;

thereby enabling a house pet to tear apart the main and secondary members of the toy by gripping the exterior surfaces of the toy with its paws and mouth, and subsequently enabling a human to easily reassemble the toy by reattaching the interface surfaces of the main member and secondary members.

The Examiner asserted that VanNatter discloses these features at col. 2, l. 36.

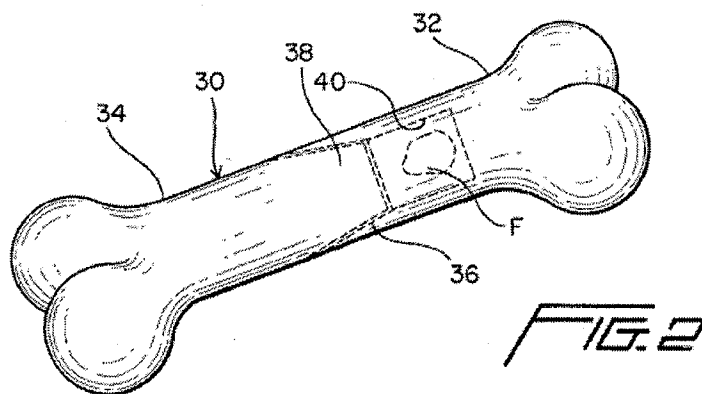
Specifically, the Examiner stated that

[t]he interface surfaces of the main member and the interface surfaces of the secondary members are attachable by a human to create an attached toy state via the snap connectors which could be non-destructively detached by a house pet using its mouth and paws to create a detached toy state by disconnecting the snap connectors which could then be reattached by a human after being separated.

(Office Action, p. 3, ll. 4-9).

In contrast to the Examiner's assertion above, VanNatter, at col. 2, ll. 36-37, discloses, "Such devices with two securable but separable parts."

VanNatter, characterized more precisely, is directed to a pet toy that houses an animal treat, wherein the animal treat “is not accessible by an animal.” (see VanNatter, Abstract and FIG. 2, item F, below) (emphasis added). When VanNatter’s animal retrieves the toy and returns it to a person, the person is able to disassemble the toy and provide the treat to the animal. Thus, the animal cannot disassemble VanNatter’s toy. In turn, VanNatter’s pet toy, that is designed not to be disassembled by a house pet, does not disclose, either expressly or inherently, the claimed feature, “non-destructively detachable by a house pet.”



Furthermore, if VanNatter’s non-detachable, two part toy could be detached by a very strong animal, the interface surface would necessarily be deformed. An example of such a situation is where a common pet dog, such as a Labrador Retriever, crushes or shatters the plastic interface 36 of the bone (see FIG. 2, above) into pieces. Moreover, once a large dog detaches one part of the bone from the other, the dog is highly likely to chew the interfaces 36 to a degree wherein the human cannot “repeatedly” or “easily reassemble” VanNatter’s plastic component parts (32 and 34) together again.

In sum, independent claim 21 is patentable over VanNatter because VanNatter does not disclose each and every limitation of claim 21 (see MPEP § 2131). Likewise, independent claim 41 is patentable over VanNatter for similar reasons. Moreover, dependent claims 22-30, 50, 51; and 42-47, 52-54, are patentable over VanNatter at least by virtue of their respective dependence from claims 21 and 41.

## 2. Claim Rejection – 35 U.S.C. § 102

The Examiner has rejected claims 21 and 26 under 35 U.S.C. § 102(b) as being anticipated by Russell.

Independent claim 21 includes the following features:

wherein the pet toy main member is shaped and sized to prevent swallowing by a house pet;

wherein the interface surfaces of the main member and the interface surfaces of the secondary members are . . . non-destructively detachable by a house pet using its mouth and paws to create a detached toy state, and repeatably reattachable by a human to recreate an attached toy state after being detached by a house pet.

The Examiner asserted that Russell discloses that “[t]he toy . . . includes secondary members (*i.e.*, 20 and 24) with exterior surfaces that could be non-destructively gripped by a house pet using its mouth and paws.” (Office Action, p. 4, ll. 6-8). Russell’s tear-apart stress-relief doll has a “conventional stuffed configuration having a fabric outer surface and suitable filling material such that the likelihood of damage is minimized when component parts of the doll 10 are torn off and thrown about a room.” (Russell, col. 2, ll.19-24) (emphasis added). Household pets readily and expeditiously puncture the fabric of stuffed animals, tear the fabric, and pull out the stuffing. Additionally, pets often pop the plastic eyeballs out of dolls. Conventional plastic eyeballs as well as synthetic stuffing material, if swallowed, can cause an animal to choke and / or have a gastro-intestinal track obstruction. In short, Russell’s “conventional . . . fabric outer surface” cannot be construed to disclose the claimed “secondary members” that are “non-destructively detachable by a house pet.”

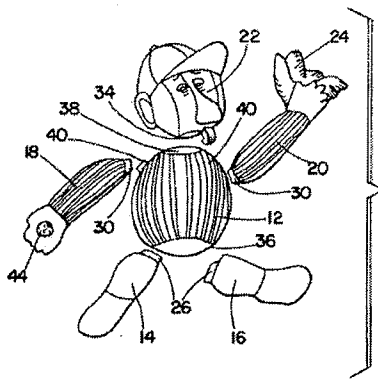


Fig. 2

Next, the Examiner asserted that “[t]he main and secondary members are shaped and sized to prevent swallowing by a house pet.” (Office Action, p. 4, ll. 11-12). Russell’s stuffed doll, as shown in FIG. 2, above, represents a sports referee that can be used to take out aggression on. In particular, the stuffed doll is a football referee, wherein “[t]he hand of the left arm 20 holds a flag 24 such as is thrown by a football referee to indicate a penalty.” (Russell, at col. 2, ll. 26-28). It is incongruous to state that a football flag is “shaped and sized to prevent swallowing by a house pet.” It is common knowledge among football fans that a flag 24 is flat, flexible, and small – features which render the flag 24 easy to swallow by a common pet dog, such as a Labrador Retriever.

In sum, independent claim 21 is patentable over Russell because Russell does not disclose each and every limitation of claim 21 (see MPEP § 2131). Moreover, dependent claim 26 is patentable over Russell at least by virtue of its dependence from claim 21.

### **3. Claim Rejections – 35 U.S.C. § 103(a) – claims 25 and 45**

The Examiner has rejected claims 25 and 45 under 35 U.S.C. § 103(a) as being unpatentable over VanNatter.

As set forth above in numbered paragraph 1, VanNatter does not disclose each and every limitation of either independent claim 21 or 41. At least by virtue of their respective dependence from claims 21 and 41, claims 25 and 45 are patentable over VanNatter.

### **4. Claim Rejections – 35 U.S.C. § 103(a) – claim 27**

The Examiner has rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Russell in view of Alonso.

As set forth above in numbered paragraph 2, Russell does not disclose each and every limitation of claim 21. At least by virtue of its dependence on claim 21, each and every limitation of claim 27 is not disclosed in Russell.

The Examiner asserted that the component parts of Russell's toy can be attached to each other via magnets, as taught by Alonso. However, Alonso's magnets do not obviate Russell's shortcomings set forth in numbered paragraph 2 regarding claim 21. Therefore, each and every limitation of claim 27 is not disclosed, taught, or suggested by Russell, in view of Alonso. Thus, claim 27 is patentable over Russell in view of Alonso.

#### 5. Claim Rejections – 35 U.S.C. § 103(a) – claim 30

The Examiner has rejected claim 30 under 35 U.S.C. § 103(a) as being unpatentable over VanNatter in view of Snook.

As set forth above in numbered paragraph 1, VanNatter does not disclose each and every limitation of claim 21. At least by virtue of its dependence on claim 21, each and every limitation of claim 30 is not disclosed in VanNatter.

In *KSR Int'l Co.*, the Supreme Court, with regard to making a determination of obviousness, declared:

Often, it will be necessary ... to look to interrelated teachings of multiple patents; the effects of demands known to the design community present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine **whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.** To facilitate review, this analysis should be explicit.

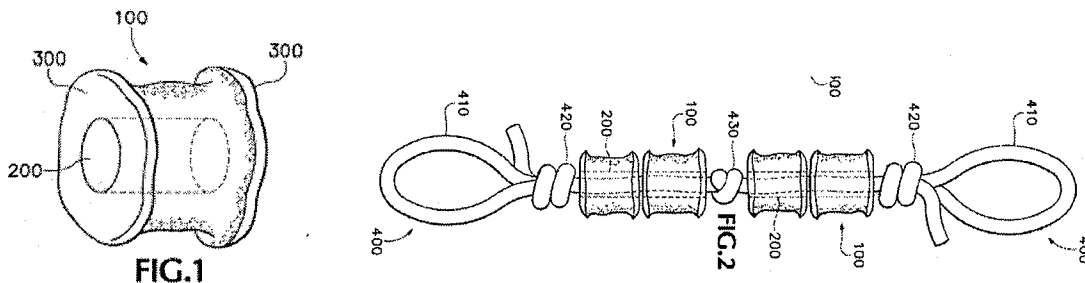
*KSR International Co. v. Teleflex Inc.*, No. 04-1350, slip. Op. at 4 (April 30, 2007) (emphasis added).

The Examiner set forth an explicit analysis as to why one of ordinary skill in the art would combine the teachings of VanNatter and Snook, below:

VanNatter discloses the basic inventive concept with the exception of a cord connecting the members. Snook discloses a dog toy that has separate elements (100, 200) connected by a cord (FIG. 2). It would have been obvious to one of ordinary skill in the art from the teaching of Snook to include a cord attaching the members together in order to increase the value of the toy since it could also be used as a pull toy (FIG. 3).

(Office Action, p. 5, ll. 16-22).

With regard to claim 21, the Examiner asserted that VanNatter is directed to a toy that, ostensibly, is designed to prevent its components from being swallowed by a pet (see Office Action, p. 3, ll. 3-4). To the contrary, Snook's product is a rope holding "dehydrated sweet potatoes or yams or both." (see Snook, Abstract, FIG. 2, below). Applying the teachings of *KSR Int. Co.* to the facts herein, the Examiner has not set forth an explicit analysis as to why one or ordinary skill in the art would combine VanNatter's toy that, is designed to prevent its components from being swallowed, with a potato chunk (see Snook, FIG. 1, below). It appears that one of ordinary skill in the art would not string the teachings of VanNatter and Snook together because, in one hypothetical embodiment, a pet dog would readily consume the sweet potato chunks, and in another hypothetical embodiment, a rope doesn't provide a snap-in feature to fasten two oblique objects, thereby create a central compartment for a treat. In fact, the potato would be exterior to the compartment and the pet would have no incentive to return the string after consuming the potato.



Even if the teachings of VanNatter and Snook are combinable, Snook does not provide the features to overcome VanNatter's shortcomings listed above in numbered paragraph 1. In turn, claim 30 is not obvious over VanNatter in view of Snook because VanNatter in view of Snook does not disclose, teach, or suggest each and every limitation of claim 30.

## 6. New Claims 55-62

Claims 55-58 and 59-62 are patentable over the art of record at least by virtue of their respective dependence from claims 21 and 41.

**CONCLUSION**

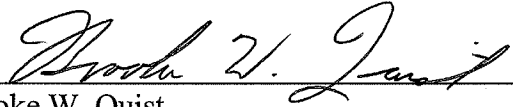
Applicant has made an earnest and *bona fide* effort to clarify the issues before the Examiner and to place this case in condition for allowance. Reconsideration and allowance of all of claims 21-30, 41-47, and 55-62 is believed to be in order, and a timely Notice of Allowance to this effect is respectfully requested.

The Commissioner is hereby authorized to charge the fees indicated in the Fee Transmittal, any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17, or to credit any overpayments, to Deposit Account No. 194293, Deposit Account Name STEPTOE & JOHNSON LLP.

Should the Examiner have any questions concerning the foregoing, the Examiner is invited to telephone the undersigned attorney at (310) 734-3200. The undersigned attorney can normally be reached Monday through Friday from about 9:00 AM to 6:00 PM Pacific Time.

Respectfully submitted,

Date: May 18, 2007

  
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